IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No.116 of 1998
with
Special Civil Applications Nos. 282, 1403, 6438,
6695 and 6926 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.

2. To be referred to the Reporter or not?-Yes.

3. Whether Their Lordships wish to see the fair copy of the judgement?-Yes.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-Yes.

5. Whether it is to be circulated to the Civil Judge?-No.

PRANTIYA KAMDAR SENA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 116 of 1998
Mr.Haroobhai Mehta, Senior Counsel,
with MRS VASAVDATTA BHATT for Petitioners
Mr.S.N. Shelat, Additional Advocate General, with
MR SP HASURKAR, Addl. Solicitor, for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2

2. Special Civil Application No.282 of 1998
Mr.G.A. Joshi, Petitioner-party-in-person.
Mr.S.N. Shelat, Additional Advocate General, with

MR D.P. Joshi, AGP, for Respondent respondent No.1.
Mr.N.R. Shahani, Advocate, for respondent No.2.
Dr. Mukul Sinha, Advocate, for respondent No.3.

3. Special Civil Application No 1403 of 1998
MR GIRISH PATEL for Petitioners
Mr.S.N. Shelat, Additional Advocate General, with
MR SP HASURKAR, Additional Solicitor, for the Respondent.

4. Special Civil Application No.6438 of 1998
Mr.Haroobhai Mehta, Senior Counsel, with
Mr.Ketan A Dave, Advocate, for the Petitioner.
Mr.S.N. Shelat, Additional Advocate General, with
MR SP HASURKAR, Additional Solicitor,
for the first Respondent.
Mr.R.J. Oza, Advocate, for 2nd respondent.
Dr.Mukul Sinha, Advocate, for respondent No.4.
Mr. R.C. Pathak, Advocate, for respondent No.5.
Mr.P.S. Chari, Advocate, for respondent No.6.
Mr.V.D. Parghi, Advocate, for respondent No.7.
Mr.N.S. Desai, Advocate, for respondent No.14.
Respondents Nos. 3, 8, 9, 10, 11, 12, 13,
15 and 16 served.

5. Special Civil Application No. 6695 of 1998.
Mr.D.S. Vasavada, Advocate, for the Petitioner.
Mr.S.N. Shelat, Additional Advocate General, with
Mr.S.P. Hasurkar, Additional Solicitor, for
respondents 1 and 2.
Mr.R.D. Dave, Advocate, for respondent No.3
Mr.K.V. Gadhia, Advocate, for respondent No.4.

6. Special Civil Application No.6926 of 1998.
Mr.D.S. Vasavada, Advocate, for the Petitioner.
Mr.S.N. Shelat, Additional Advocate General, with
Mr.S.P. Hasurkar, Additional Solicitor, for
respondents 1 and 3.
Mr.R.J. Oza, Advocate, for 2nd respondent.
Mr.Kamal Trivedi, Advocate, of M/s. Trivedi & Gupta,
for respondents 4 to 8.

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.H.KADRI
Date of decision: 14/10/98

C.A.V. JUDGEMENT

1. In all these Special Civil Applications, common questions of law arise for consideration and hence, they were all heard jointly and disposed of by this judgment. The petitions relate to the selection, appointment and

promotion of Labour Court Judges.

2. We take Special Civil Application No.6926 of 1998 as the lead case, wherein the following contentions have been raised :-

In this Special Civil Application, the petitioner challenges the recruitment of Labour Court Judges made by the Gujarat Public Service Commission. The G.P.S.C. issued advertisement for 25 posts of Judges, Labour Court (Junior Division) and out of 25 posts 13 posts were meant for general category candidates, one post for Scheduled Caste and five posts for Scheduled Tribe and six posts for Socially and Educationally Backward Classes. Government of Gujarat had made Rules to regulate the recruitment to the post of Judge, Labour Court, called "Labour Court Judge (Junior Division) Recruitment Rules, 1982". Pursuant to the advertisement, 806 candidates applied for selection and then an elimination test was conducted and 71 candidates were chosen for oral interview. Interview was held in July, 1998 and 12 candidates were selected and one candidate was kept in the wait list. According to the petitioner, the selection process is against the procedure declared by the Honourable Supreme Court for the selection and appointment of Labour Court Judges. There was no consultation with the High Court. The elimination of 729 candidates was arbitrary, irrational and unconstitutional. Constitution of the Selection Committee was illegal. S.C., S.T. and S.E.B.C. candidates have been denied the opportunity of being considered for appointment by ingenious method of selection. The petitioner prays for issuance of a writ of certiorari or any other appropriate writ to set aside the selection of candidates for appointment of Labour Court Judges. The petitioner has also prayed for termination of service of the ad hoc Judges already working as Labour Court Judges.

3. On behalf of the respondent-State, a common affidavit has been filed denying the allegations. The main contention urged in the common affidavit is that these public interest litigations are not maintainable as they have no locus standi to file these petitions. There is no bona fides in filing these Special Civil Applications as they have been filed at the instance of candidates, who have not been selected. In Special Civil Applications Nos. 116 of 1998 and 281 of 1998, directions were given by this Court to fill up the posts of Judges of the Labour Court and Industrial Tribunal and as the State Government was under the direction to fill

up the posts, the selection was conducted in accordance with the Rules made by the Governor under Article 309 of the Constitution. The selection was conducted in accordance with Section 7 of the I.D. Act. The recruitment made on the basis of the existing Rules cannot be invalidated on the short ground that it has been made in contravention of Article 234. The entire process of selection was started pursuant to the direction given by this Court. As regards the non-selection of women candidates, it is submitted that the selection has been made only for 12 posts and 13 vacancies continued to exist and all other reserved categories can be accommodated in those vacancies. 7 candidates belonging to the general category have been selected and that is the exact number which was permissible under the advertisement. Elimination test conducted by the G.P.S.C. was not illegal or arbitrary.

4. On behalf of the Gujarat Public Service Commission, an affidavit has been sworn to by the Deputy Secretary of the G.P.S.C. It is contended that the challenge advanced by the petitioner is not maintainable, as it is quite vague and general in nature. The Commission issued advertisement on 2.3.1998 and it was specifically mentioned that the Commission may hold elimination tests so as to decide who should be called for personal interview and the medium of elimination test will be Gujarati unless otherwise decided by the Commission. The Commission is competent to hold elimination test in the event of receiving large number of applications. 806 applications were received for filling up the 25 vacancies. Elimination test was conducted and 732 applicants attended such test. Suitability of the candidate for recruitment by selection was assessed by interview conducted by the Selection Committee. The elimination test had no connection whatsoever with the suitability of the candidate. The introduction of the elimination test was only to restrict the zone of consideration from amongst the eligible candidates. The Selection Committee was duly constituted in accordance with the procedural rule. The Commission has acted impartially and persons were selected by assessing the suitability of the candidate.

5. We heard Mr.Haroobhai Mehta and Mr.Girish Patel, learned counsel appearing for the petitioners, and also Mr.S.N. Shelat, learned Additional Advocate General, for respondent-State, Dr. Mukul Sinha, and Mr.Kamal Trivedi, learned counsel for the other respondents, and Mr.R.J. Oza, learned counsel for the G.P.S.C.

6. In the State of Gujarat, there are about 41 posts of the Judge, Labour Court, and so also, there is a sanctioned strength of 17 as Members of the Industrial Court. For some reason or other, entire posts were not filled up, and, as and when vacancies arose, regular recruitment was not made to fill up the vacancies. There was a general complaint that these posts were not filled up and the large number of cases pending before these Labour Courts were not decided within a reasonable time.

7. Special Civil Application No.116 of 1998, though filed against the transfer of one Labour Court Judge from Surat to Junagadh, counsel for the petitioner prayed that Court shall direct the respondent-State to fill up the post of Labour Court Judge. When Special Civil Applications Nos.116 of 1998 and 282 of 1998 came up for consideration, a Division Bench of this Court passed an order on 11.2.1998, directing the State Government to fill up the post of Presiding Officer of the Labour Court and Members of the Industrial Tribunal in accordance with the provisions contained in Sections 7 and 7A of the I.D. Act within a period of two months. Pursuant to this direction, the State Government addressed the Gujarat Public Service Commission to take steps for selection of the candidate for appointment to the post of Judge, Labour Court. Judges of the Labour Court and Members of the Industrial Tribunal are under the administrative control of the Department of the Labour and Employment. The Officers working as Judges of the Labour Court and Members of the Industrial Tribunal are not being treated as part of the Judicial Service. They are not under the administrative control of the High Court of Gujarat. On 11.2.1998, in the decision in State of Maharashtra v. Labour Law Practitioners' Association, reported in 1998(2) GLR 1079 (S.C.) (Civil Appeal No.1505 of 1987), the Honourable Supreme Court held that the Labour Courts are discharging judicial functions and Judges of the Labour Courts and Industrial Tribunals belong to `Judicial Service' of the State. This inevitably led to the situation that so far as the appointments of persons to the Judicial Service are concerned, in view of Article 234 of the Constitution, the same shall be made by the Governor of the State in accordance with the Rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. Without paying attention to the decision rendered by the Supreme Court, the selection process initiated by the Public Service Commission continued and 12 candidates were selected for appointment as Judges of the Labour

Court. The main challenge in these Special Civil Applications is that the selection of these 12 candidates was not done in accordance with the mandate of Article 234 of the Constitution and hence, these persons are not entitled to be appointed as Judges of the Labour Court. The selected candidates appeared through counsel and contended that their selection as Judges of the Labour Court was perfectly in accordance with law and the same is not liable to be set aside.

8. It was contended by the counsel, who appeared for the selected candidates that even if there was no specific consultation with the High Court as provided under Article 234 of the Constitution, there was substantial compliance with this provision as the Rules framed under Article 309 of the Constitution were sent to the High Court on 19.2.1998 while seeking the names of some of the Judicial Officers for being appointed as Judges of the Labour Court.

9. Some of the petitioners in these Special Civil Applications contended that the whole procedure for selection of the Labour Court Judges was vitiated by mala fides and procedural irregularity and, according to them, the written test was conducted to eliminate the candidates and the marks secured in this written test was not taken into consideration while preparing the final list, or, in other words, the contention of these petitioners is that the marks secured in the interview alone should not have been the criterion for selection.

10. At first, we shall deal with the question whether there is any substance in the allegation regarding the procedural irregularity alleged against the Gujarat Public Service Commission in conducting the selection. As many as 806 candidates submitted applications for selection for the post of Judge, Labour Court. 25 candidates were required to be selected and the Commission thought it fit to conduct a preliminary test for the purpose of eliminating some candidates. It was published by the Commission that the selection would be exclusively based on the interview. The petitioners have not challenged the Rules of Recruitment and they have also no case that the selection solely based on interview was illegal or irrational. The main grievance of the petitioners is regarding the conduct of the elimination test by the Gujarat Public Service Commission. In the advertisement itself, notice was given to the public that, if necessary, the Commission will hold elimination test so as to decide as to who should be called for personal interview and the medium of elimination test

will be Gujarati unless otherwise decided by the Commission. Therefore the petitioners are not entitled to challenge the elimination test as such conducted by the Gujarat Public Service Commission. It has been held by various decisions that when large number of applications are received, it is well within the powers of the selection body to conduct elimination test. In Madhya Pradesh Public Service Commission v. Navnit Kumar Potdar and another, (1994) 6 SCC 293, the Honourable Supreme Court approved conduct of elimination test. It was held that where the selection is to be made purely on the basis of interview, if the applications for such posts are enormous in number with reference to the number of posts available to be filled up, then the Commission or the Selection Board has no option but to short list such applicants on some rational and reasonable basis. Where selection has to be made only on the basis of interview, then such interviews / viva voce tests must be carried out in a thorough and scientific manner in order to arrive at fair and satisfactory evaluation of the personality of the candidate. The sole purpose of holding the interview is to search and select the best among the applicants. It would be impossible to carry out satisfactory viva voce test if large number of candidates are interviewed each day till all the applicants, who have been found to be eligible on the basis of the criteria and qualifications prescribed are interviewed. If large number of applicants are called for interview in respect of few posts, the interview is then bound to be casual and superficial because of the time constraint. Here, the short-listing of candidates was done on the basis of the written test. The petitioners have no grievance against the manner in which the written test was conducted. There is also no allegation that the elimination test was done due to any extraneous consideration. Therefore, we do not find any illegality on the part of the Commission in conducting the elimination test.

11. Another contention urged by the petitioners' counsel against the selection is that 25 vacancies were notified for selection and in spite of the fact that there were several Scheduled Caste, Scheduled Tribe and women candidates being available for interview, the Commission did not select them for certain ulterior purpose and, therefore, the whole selection process is illegal. Counsel for the Commission submitted that the selection was made solely on merit and the Members of the Interview Committee consisted of the Chairman of the Public Service Commission and other Members, including an Expert and Chairman of the Industrial Tribunal. Even

though 71 candidates were interviewed, 12 candidates were found suitable for the post. The petitioners could not make out a case that meritorious candidates were denied selection. In fact, in a petition filed in the form of Public Interest Litigation, it will not be justifiable for this Court to go into such details. If any person is aggrieved, it is for him to challenge the selection and in matters relating to service, the Supreme Court deprecated the practice of public interest litigation. When the aggrieved persons are not coming forward to challenge the selection, it would not be proper for others to take up their cause and seek remedies. Therefore, we hold that the selection made by the Commission, as such, is not vitiated by any procedural illegality.

12. The main contention urged in this petition is that the selection and appointment of Judges of Labour Court is not being made in accordance with the constitutional provision, in the sense that there is violation of the mandate contained in Article 234 of the Constitution. As stated earlier, the Judges of the Labour Court and Members of the Industrial Court were not considered as part of the Judicial Service. Ever since the formation of the Gujarat State, Members of this Service have been under the administrative control of the Department of Labour and Employment of the State of Gujarat. In an earlier decision rendered by the Supreme Court on 24.4.1990, The Alahar Cooperative Credit Service Society v. Sham Lal, 1995(2) GLH 550, it was held that the Labour Court is not a court subordinate to the High Court and application for initiating contempt of court proceedings was rejected by the Supreme Court. However, in that decision, the matter was not dealt with in detail and the question as to whether the Labour Courts would come within the purview of the subordinate courts under

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question came up for consideration before the Supreme Court in State of Maharashtra v. Labour Law Practitioners' Association & Ors., 1998(2) GLR 1079, and the matter was considered in detail and it was held that the Labour Court performs judicial functions and they form part of the Judicial Service. It was held that the Judges of the Labour Court, Industrial Tribunals and Industrial Courts belong to Judicial Service of the State and their appointment, posting and promotion shall be in accordance with Articles 234 and 235 of the Constitution and it was held in paragraph 20 of the judgment as under :-

> "... The Constitutional scheme under Chapter V of Part VI dealing with the High Courts and Chapter VI of Part VI dealing with the subordinate Courts shows a clear anxiety on the part of the framers of the Constitution to preserve and promote independence of the Judiciary from the executive. Thus, Art. 233 which deals with appointment of District Judges requires that such appointments shall be made by the Governor of the State in consultation with the High Court. Art. 233(2) has been interpreted as prescribing that "a person in the service of the Union or the State" can refer only to a person in the Judicial service of the Union or the State. Art. 234 which deals with recruitment of persons other than District Judges to the Judicial service requires that their appointments can be made only in accordance with the Rules framed by the Governor of the State after consultation with the State Public Service Commission and with the High Court. Art. 235 provides that the control over District Courts and Courts subordinate thereto shall be vested in the High Court; ...."

Even after the above decision, the administrative control over the Judges of the Labour Court and the Industrial Tribunal continued to vest with the Labour and Employment Department of the State. When series of vacancies of the Judges of the Labour Court arose, steps were taken to appoint the Judges of the Labour Court and selection was conducted by the Public Service Commission. However, the procedure contemplated under Article 234 of the Constitution was not followed. As per Article 234 of the Constitution, the appointments of persons other than District Judges to the Judicial Service of a State shall be made by the Governor in accordance with the Rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. The scope and ambit of Article 234 has been explained in various decisions. It is now a well-settled position that appointments to the Judicial Service can only be made in accordance with the Rules made by the Governor in consultation with the Public Service Commission and the High Court.

13. In the instant case, for appointments of Labour Court Judges, Recruitment Rules have been framed in 1982. These Rules have been framed by the State in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The Rules, viz., "Labour Court Judges (Junior Division) Recruitment Rules, 1982", came into force with effect from 3rd May, 1982. As regards the appointment of the Member, Industrial Court, the State Government framed Rules on 12th February, 1965. It may also be noted that the power has been conferred on the State under Section 7 of the Industrial Disputes Act, 1947 to constitute Labour Courts for the adjudication of Industrial Disputes. Section 7A of the I.D. Act, 1947 confers power on the appropriate Government to constitute Tribunals for the adjudication of the industrial disputes. Sections 9 and 10 of the Bombay Industrial Relations Act, 1946 respectively gives powers to the State Government to constitute Labour Courts and Court of Industrial Arbitration. Section 9 of the Bombay Industrial Relations Act prescribes qualification for appointment as the Presiding Officer, Labour Court, and it is specified that he should have practised as an Advocate or Pleader for not less than three years or has regularly appeared as a Member of a Trade Union for not less than seven years in proceedings before the Labour Court, Industrial Court or Tribunal. The Labour Court Judges (Junior Division) Recruitment Rules, 1982 and the Recruitment Rule for appointment to the post of Member, Industrial Court are framed in accordance with the provisions contained in the Industrial Disputes Act and the Bombay Industrial Relations Act, 1946. These Rules have not been framed after consultation with the High Court of Gujarat. The State also has no case that these Rules have been framed in accordance with Article 234 of the Constitution. The counsel, who appeared for the selected candidates, made an attempt to contend for the position that these Rules were submitted to the High Court for approval and this contention is based on a letter written by the Deputy Secretary to the Labour and Employment Department, to the Registrar of the High Court, which is produced as Annexure 2(A) in Special Civil Application No.116 of 1998. A reading of this letter would show that the State Government wanted to fill up the post of Judges of Labour Court (Junior Division), and the post of President, Industrial Court, Ahmedabad, on deputation basis and they sought names of the officers working in the Judicial Service, who are prepared to work as Labour Court Judges (Junior Division), Class I or President of the Industrial Court, Ahmedabad either by transfer or by deputation and in that regard, the copy of the Recruitment Rules was sent along

with the letter and this, according to the counsel for the selected candidates, is sufficient consultation and so long as no mode is prescribed for consultation, according to him, there was substantial compliance with Article 234.

14. We are not inclined to accept the above contention. `Consultation' contemplated under Article 234 must be effective consultation. Though no specific mode as such is prescribed for the manner in which the consultation is to be made, by various judicial pronouncements, the word `consultation' has acquired a definite and concrete meaning in the legal parlance. In Union of India v. Sankalchand Himatlal Sheth and another (1977) 4 SCC 193, `consult' implies a conference of two or more persons or an impact or two or more minds. In

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it was held that what is essential under Article 234 is that both the High Court and the Commission should be informed by the Governor that he proposes to make Rules and those Rules, which he proposes to make should be made available to them. So, after a study and scrutiny of those Rules, the High Court and the Commission might be in a position to offer advice. In another decision in M.I. Nadaf v. The State of Mysore and another, AIR 1967 Mysore 77, it was held in paragraph 9 as under :-

> "... Article 309 of the Constitution empowers the Governor to make rules regulating the recruitment and the conditions of services of persons appointed to the Civil Services of the State. But that Article, as its opening words themselves indicate, is subject to the other provisions of the Constitution. Article 234 is one such provision. The power of the Governor to make rules under Article 309 of the Constitution is not only subject to the other provisions of the Constitution, but it is also subject to any Act of the appropriate Legislature. But the rules to be made by him under Article 234 are not subject to any Act that may be enacted by the appropriate Legislature. But they can be made only after consultation with the State Public Service Commission and the High Court. The consultation with the High Court is not something nominal. It is the very essence of the matter. It must be borne in

> mind that our Constitution visualises the separation of the judiciary from the executive...."

14. In B.S. Yadav and others v. State of Haryana, AIR 1981 SC 561, the question that came up for consideration was the controversy regarding the seniority of the District Judges in the State of Haryana. It was held by the Supreme Court that even though Article 235 of the Constitution does not require the consultation with the High Court for framing Rules, it would be in the fitness of things that when amendments to the Rules are made, consultation is made with the High Court.

15. From the various decisions quoted above, it is clear that even though the power to make Rules regarding the appointments of persons other than District Judges to the State Judicial Service vests with the Governor of the State, these Rules shall be framed only on consultation with the Public Service Commission and the High Court. Article 234 imposes a constitutional duty on the Governor to seek consultation with the Public Service Commission and the High Court. The Draft Rules shall be sent to the High Court for its opinion and any variation or suggestions made by the High Court shall be considered before the finalisation of the Rules. This is to preserve the independence of the Judiciary and to see that there is no veiled control over the independence of the Judiciary by the Executive. Our Constitution visualises separation of the Judiciary from the Executive. Unlike other services of the State, the Judicial Services is expected to be independent of the Executive. The Members of the Judicial Service are required to pronounce on the legality of action taken by the governmental authorities. It is with this intent and purpose Article 234 of the Constitution is enacted to see that the Rules regarding appointment are made in consultation with the High Court. What is essential under Article 234 is that both the High Court and the Commission should be informed by the Governor that he proposes to make Rules. If the High Court or the Commission states that it has no advice to tender, the Governor can go ahead with the finalization of the Rules. Though the advice, if any, tendered by the High Court or the Commission is not binding on the Governor, the opinion expressed by the High Court or the Commission shall be taken into consideration by the Governor. It is entirely for the Governor to decide whether the advice tendered to him should be accepted or not. Then only there will be effective consultation as contemplated under Article 234.

16. The Rules framed for the appointment of Judges of the Labour Court, viz., Labour Court Judge (Junior Division) Recruitment Rules, 1982, and the recruitment rules for the post of Member, Industrial Court were never submitted to the High Court for its opinion for the obvious reason that the Judges of the Labour Court and members of the Industrial Court were not considered as part of the State Judicial Service. Even after the decision of the Supreme Court in State of Maharashtra v. Labour Law Practitioners' Association, reported in 1998(2) GLR 1079 (S.C.), no steps have been taken to frame fresh recruitment rules in consultation with the Public Service Commission and the High Court.

17. The next question that arises for consideration is whether the present recruitment of Judges of the Labour Court made by the State Government in consultation with the Public Service Commission is to be considered as valid or not. It is true that the State Government initiated steps for appointment of Judges of the Labour Court pursuant to an order passed by this Court on 11.2.1998. The Court, in that order, did not indicate the manner in which the selection has to be made. Even though the decision in State of Maharashtra v. Labour Law Practitioners' Association, reported in 1998(2) GLR 1079 (S.C.) was rendered on 11.2.1998, which was later relied on by a Full Bench of this Court in Gujarat Mazdoor Sabha v. State of Gujarat, reported in 1998(2) GLR 1135, no further directions were issued by the Court regarding the recruitment rules or the mode of selection. Naturally, the Public Service Commission finalised the list of selected candidates. The counsel for the selected candidates contended that this selection was made perfectly in accordance with the recruitment rules and in compliance with Section 7 of the I.D. Act and Section 9 of the Bombay Industrial Relations Act and, therefore, the selection is to be upheld. If there is violation of the constitutional provision, it is difficult to sustain any action even if the same is done in accordance with other statutory provisions. Constitutional provision has got supremacy over all other statutory rules as the Constitution is the "Will of the People", whereas the statutory laws are the `creation of the legislators', who are elected representatives. Will of the people, as reflected in constitutional provisions, must always prevail in case it stands in opposition to other statutory provisions (see paragraph 328 of the decision in Supreme Court Advocates-on-Record Association and others v. Union of India, (1993) 4 SCC 441). Whenever there was infraction of Article 234 of the

Constitution, selections or appointments were set aside by the Courts (see M.I.Nadaf v. The State of Mysore and another, AIR 1967 Mysore 77, V.K. Kulkarni v. State of Mysore and another, AIR 1963 Mysore 303, and Chandra Mohan v. State of U.P. and others, AIR 1966 SC 1987).

18. However, in the instant case, a practical view has to be taken. The selection process of the Judges of the Labour Court was initiated pursuant to an order passed by this Court on 11.2.1998. In the order, there was only a direction to fill up the posts in accordance with Sections 7 and 7A of the I.D. Act. Nothing was mentioned about consultation that has to be made with the High Court, may be for the reason that it was not thought that the Labour Court Judges and Members of the Industrial Tribunal would form part of the Judicial Service of the State. It is also pertinent to note that the decision of the Supreme Court rendered on 24.4.1990, in The Alahar Cooperative Credit Service Society v. Sham Lal, 1995(2) GLH 550 was to the effect that the Labour Court constituted under Section 7 of the I.D. Act was not court subordinate to High Court and not forming part of the Judicial Service of the State. It was only in the decision given by the Supreme Court on 11.2.1998 in State of Maharashtra v. Labour Law Practitioners' Association, reported in 1998(2) GLR 1079 (S.C.), the matter was elaborately dealt with by the Supreme Court and it was held that the Labour Courts, Industrial Tribunal and allied Officers would come within the purview of the State Judicial Service. The State Government, under a bona fide belief, asked the Public Service Commission, to conduct the selection of the Judges of the Labour Court and as required under Article 234 of the Constitution, there was no consultation with the High Court. Article 234 of the Constitution requires that the Rules to be framed for appointment to the office of the State Judicial Service shall be in consultation with the Public Service Commission and the High Court. The relevant Rules for appointment of Labour Court Judges and Members of the Industrial Tribunal were finalised without there being any consultation with the High Court. As regards the selection of the candidates for being appointed as Judges of the Labour Court, in the instant case, there was no consultation with the High Court. The message of Article 234 is to the effect that there shall be consultation with the High Court at the time of framing Rules and also at the time of the appointment and as regards the appointment to the State Judicial Service, it is common in almost all the States that a sitting Judge of the High Court will participate in the interview or viva voce that may be conducted for the selection of

candidates. That step was also not done in the instant case. However, we do not propose to quash the entire selection process starting from the acceptance of the applications for selection. We would only hold that for the purpose of present selection, the Recruitment Rules, viz., The Labour Court Judges (Junior Division), Recruitment Rules, 1982 be treated as sufficient for the present selection even though these Rules were framed without there being consultation with the High Court. We hold that the elimination test conducted by the Public Service Commission was just and proper and the selection of 71 candidates by the Gujarat Public Service Commission for being interviewed for selection has been validly made. However, we hold that the further selection of the candidates shall be done only in the presence of a sitting High Court Judge and we direct that the candidates, who had been successful in the elimination test, have to be interviewed again for the selection.

19. We are constrained to take this decision for the following reasons :-

The entire process of selection was done bona fide and none of the candidates, who participated in the selection, raised any objection regarding the selection and as per the existing Rules, one of the qualifications prescribed for selection is that the candidate should have practised as an Advocate or a Pleader for not less than three years in the High Court or any court subordinate thereto. This qualification is perfectly in accordance with the qualification prescribed by the Supreme Court in the matter of selection of Judicial Officers in the State Judicial Service (see paragraph 20 of the judgment in All India Judges' Association v. Union of India, (1993) 4 SCC 288). Even though an alternative qualification is prescribed that the candidate can be a Member of the Trade Union for not less than 7 years and who had appeared in proceedings before the Labour Court, Industrial Court or Tribunal and who held a degree in Law of a University established by law, we are told that all the 71 candidates now selected for interview are practising Advocates and not members of any Trade Union. The Gujarat Public Service Commission selected...

Government. It cannot be said that they have exercised the authority which was not vested in them. The doctrine of de facto can be applied to the instant case. In Gokaraju Rangaraju v. State of Andhra Pradesh, AIR 1981 SC 1473, a person was appointed as a Sessions Judge, whose appointment was later held to be invalid. Question

arose whether the judgments rendered by the Judge while he was in office were null and void. The Supreme Court held that under such circumstance, the de facto doctrine is applicable. In paragraph 4 of the judgment, it was held :-

> "... The doctrine is now well established that "the acts of the Officers de facto performed by them within the scope of ...
>
> assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure"...."

It was further stated that :-

> "... the doctrine is founded on good sense, sound policy and practical experience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who hold office de facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. Hence the de facto doctrine...."

Therefore, we are also of the view that what has been done by the Public Service Commission was not as a usurper of power, but in accordance with the authority vested in it. It is also pertinent to note that in P.S. Menon v. State of Kerala, AIR 1970 Kerala 165, a Full Bench of the Kerala High Court upheld the validity of selection, even though there was violation of the mandate contained under Article 234 of the Constitution as there was substantial compliance of the provision. If the candidates, who are already selected by the Public Service Commission for interview, are allowed to undergo the process of interview in the presence of a Judge nominated by the High Court, it is possible to have some substantial compliance of the provisions of Article 234 of the Constitution. Moreover, the petitioners in all these Special Civil Applications have been praying for early appointment of Judges of Labour Courts and they

were constrained to seek remedy of the immediate appointment of the Judges of the Labour Courts. It is alleged that due to non-filling up of the vacancies of the Judges of the Labour Courts and Members of the Industrial Tribunal, large number of cases are pending in various courts and there is unrest among the labourers as well as among employers. If the whole selection process is to be held invalid and a new selection is to be held, on the basis of the newly framed Rules, after due compliance of Article 234 of the Constitution of India, it will certainly take long time and parties will have to suffer manifest injustice.

20. Having regard to the facts and circumstances of the case, we set aside the final select list prepared by the Gujarat Public Service Commission and hold that the 71 candidates, who were successful in the preliminary test, may again be interviewed for the purpose of selection and the State Government shall take further steps for seeking consultation of the High Court of Gujarat for the purpose of finalisation of the selection of candidates for being appointed as Judges of the Labour Courts.

Special Civil Application No.6926 of 1998 is disposed of accordingly. Similar reliefs are sought for in Special Civil Application No.6438 of 1998, and it is also disposed of in the above terms.

Special Civil Application No.282 of 1998 :-

21. In Special Civil Application No.282 of 1998, petitioner, who is the President of a Trade Union, contends that the President of the Industrial Tribunal of Gujarat at Ahmedabad is one D.V. Joshi and that he is not qualified to be appointed as the President of the Industrial Tribunal. A contention is raised that Shri D.V. Joshi lacks qualification prescribed under Section 7A of the Industrial Disputes Act. The petitioner has no case that the appointment of Shri D.V. Joshi is in violation of Articles 234 and 235 of the Constitution. Shri D.V. Joshi also is not made a party to these proceedings. This Special Civil Application deserves to be dismissed and we accordingly dismiss the same.

Special Civil Applications No.1403 of 1998 and 116 of 1998 :-

22. These Special Civil Applications have been filed for early appointment of the Judges of the Labour Courts

and Members of the Industrial Tribunal. In view of the disposal of Special Civil Application No.6926 of 1998, no orders are required in these Special Civil Applications and they are disposed of accordingly.

Special Civil Application No.6695 of 1998 :-

23. This Special Civil Application is filed by a registered Trade Union, alleging that the promotion and appointments of respondents 3 and 4 as Members of the Industrial Court is not in accordance with the procedure contemplated under Article 235 of the Constitution. The contention of the petitioner is that as Members of the Industrial Court are the Members of the Judicial Service in view of the decision in State of Maharashtra v. Labour Law Practitioners' Association, 1998(2) GLR 1079 (S.C.), the appointing authority should follow the procedure prescribed under Article 235 of the Constitution. It is true that the promotion and posting of these respondents were not done by the High Court, treating them as Members of the State Judicial Service. The prayer of the petitioner is that the appointment and posting of these respondents should be quashed.

24. It may be noted that in an earlier case, in Rajvi Amar Singh v. State of Rajasthan, AIR 1956 Rajasthan 104, a Division Bench of the Rajasthan High Court did not quash the appointment even though there was violation of the Constitutional provision contained in Article 234 of the Constitution. In that case, certain District Judges, Senior Civil and Additional Sessions Judges were appointed without following the procedure under Articles 233 and 234 of the Constitution and ultimately, the Division Bench held that those Officers will continue on ad hoc basis and the Government was directed to provide machinery according to the provisions of the Constitution for the recruitment of such persons.

25. In another case in B.S. Yadav and others v. State of Haryana and others, AIR 1981 SC 561, certain Rules of recruitment to State Judicial Service of Punjab and Haryana were amended by the State Government without there being a consultation with the High Court of Punjab and Haryana. Seniority determined on the basis of the amended Rules was challenged before the Supreme Court. The Supreme Court accepted the contentions advanced by the petitioners and held that the promotions given were irregular. However, all promotions were not set aside and the seniority was directed to be revised and refixed.

26. In this case, the promotion and posting of

respondents 3 and 4 were done as if they were not Members of the State Judicial Service. In view of the decision in State of Maharashtra v. Labour Law Practitioners' Association, 1998(2) GLR 1079 (S.C.), the State Government can make further consultation regarding the posting and promotion of these respondents 3 and 4 and till such time, they shall continue as Members of the Industrial Tribunal on ad hoc basis.

These Special Civil Applications are disposed of accordingly. Parties to bear the costs.

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On pronouncement of the judgment, Mr.Kamal Trivedi, learned counsel appearing for respondents Nos. 4 to 8 in Special Civil Applications Nos. 6695 of 1998 and 6926 of 1998, made an oral application under Article 134-A read with Article 133 of the Constitution of India for a certificate to prefer an appeal to the Supreme Court of India. As we have only followed the Supreme Court judgments, according to us, in this case, there is no substantial question of law of general importance, which needs to be decided by the Supreme Court, and, accordingly, we decline to grant the certificate, as prayed for by the learned counsel for respondents Nos. 4 to 8 in Special Civil Applications Nos.6695 of 1998 and 6926 of 1998.

14th October, 1998 (K.G. Balakrishnan, C.J.)

(M.H. Kadri, J.)

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(apj)